

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON
RAISED BILL NO 6340, AN ACT CONCERNING JUDICIAL BRANCH
OPENNESS**

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Good Afternoon Senator McDonald, Representative Lawlor and members of the committee. I am Colleen Murphy, Executive Director and General Counsel of the Freedom of Information Commission. I would like to comment favorably on HB 6340, An Act Concerning Judicial Branch Openness.

Most of my testimony will be directed to Section 13 of the bill. Earlier this week, I testified before the GAE Committee in support of a similar proposal contained in SB 912, An Act Concerning the Definition of Administrative Functions Under the Freedom of Information Act, a bill sponsored by the Freedom of Information Commission. Section 13 would define the term "administrative functions" within the FOI Act, as it applies to the judicial department.

It continues to be the FOI Commission's belief, despite the well-intentioned and positive reform efforts by the judicial branch to shine light on the courts, that legislation is essential to guaranteeing greater transparency of the judicial system. And, the best legislative approach would be to amend the definition of administrative functions, thereby carving out those matters that are not part of the adjudicatory or judicial functions of the courts, and ensuring that such matters will be open to the public. Without a definition, we will continue on the path that has been traveled for the past three decades. The courts will provide their own definition on a case-by-case basis and will modify it to suit particular needs or concerns. That has led to some confusing results, particularly evident in the most recent and well-known case, Clerk v. Freedom of Information Commission, 278 Conn. 28 (2006), wherein the Supreme Court determined that basic docketing information contained on the court's computer system was not "administrative" and could not be accessed pursuant to the FOI Act.

It should be noted that the High Court has decided to revisit the issue. Immediately after the initial Supreme Court ruling, the FOI Commission, following the law established under the Clerk decision, had to conclude that it had no authority to order the disclosure of docket sheets (FIC # 2007-313). The decision was appealed by the Connecticut Council on Freedom of Information and the Supreme Court has decided to take the case. Although the FOIC is gratified that the court will revisit the issue, it feels that codifying the definition of administrative functions would eliminate the confusion caused by ad hoc rulings on the subject. By passing this bill, you will ensure that the public will be entitled to this basic information.

The proposed definition contained in Section 13 provides:

"administrative functions" means those matters that relate to the management of the internal institutional operations of the judicial branch including, but not limited to, budgeting, accounting, personnel, facilities, physical operations, contracting, docketing and scheduling;

The proposed language incorporates what the Supreme Court has pointed to in cases prior to the Clerk decision as the kinds of matters that are encompassed by the term "administrative functions," and also includes the kind of information that was at issue in Clerk, but found not to be subject to the FOI Act. It is the Commission's view that none of the items set forth in the proposed definition would impinge on the judicial functions of the court.

I would like to note that the FOIC is disappointed that rule-making has not been included in the definition of an administrative function in this bill. Rule-making is included in SB 912 and, for the purposes of a more open and transparent judicial system should, we believe, be part of the definition. The Commission continues to believe that rule-making is not adjudicative in nature and ought to be subject to the open records and meetings provisions of the FOI Act. We would hope that your committee would consider adding rule-making to the definition in this bill.

The Commission applauds the language in Section 6 of the bill, which states that the entire record of the proceedings before the Judicial Review Council shall be open to the public, after a finding of probable cause. This language will ensure more public access to the judicial review process. The FOI Commission seeks a word change at line 580 of the bill, in Section 6. The request is technical in nature but important to the goal of more transparency. At present, the language *requires*, by use of the word "shall", that information that is permissively exempt under the FOI Act under Conn. Gen. Stat. 1-210(b), *must* be withheld from the public. The FOIC requests that the word "shall" be changed to "may" to make certain that, consistent with the permissive exemptions contained in the FOI Act, such records can be withheld, but may be disclosed if a determination is made that disclosure would be appropriate in a given case.

In closing, thank you for the opportunity to testify concerning this important bill before you that will potentially have a meaningful impact on the transparency of the judicial system. I am happy to answer any questions you may have.